titioner (App. 20-21).[1] On March 10, 1972, petitioner redeemed the remaining two weapons, similarly answering question "8b" falsely on each of the firearm forms (App. 45-48).

A government agent testified that when petitioner was questioned as to his false responses, he admitted that he had known when filling out these forms that he was a felon and that his answers were untrue. At trial, petitioner testified that he was aware that he could have been imprisoned for more than one year on the earlier felony conviction and explained his incorrect response by claiming that he had not read the form but had merely filled it in as directed by the pawnbroker (App. 34-35, 40-41).

SUMMARY OF ARGUMENT

Petitioner clearly received fair warning that false answers on the Form 4473 could subject him to punishment. There is, accordingly, no occasion to construe the statute narrowly for lack of such warning, as was done in *United States* v. *Bass*, 404 U.S. 336.

A. 18 U.S.C. 922(a)(6) forbids making false statements "in connection with the acquisition * * * of any firearm" if the statement is "material to the lawfulness of the sale or other disposition of such firearm * * *" (emphasis added). "Acquisition"

---

[1] 18 U.S.C. 922(d)(1) makes it unlawful for any dealer (including a pawnbroker) "to sell or otherwise dispose of any firearm" to one known to have been convicted of "a crime punishable by imprisonment for a term exceeding one year."

and "disposition" refer to two sides of the same transaction, and in common parlance both would refer to the transfer of a weapon from a pawnbroker to a pawnor.

What is more, Congress specifically included pawnbrokers as dealers whose transactions would come within the statutory gun control system, and did so with specific reference to their pawn transactions. It would thus be wholly inconsistent to exclude the pawn transaction itself from the reach of the statute. Congress could have made a specific exception for pawn transactions, as it did for certain other kinds of gun dealings (18 U.S.C. 922(a)(2)(A), 925). The fact that it did not, though clearly aware that pawnbrokers and their activities were generally covered by the statute, is further evidence of legislative intent to include the pawn redemption situation within the scope of the statute.

B. In adopting the Omnibus Crime Control and Safe Streets Act of 1968, Congress enacted a comprehensive program for monitoring commercial traffic in firearms and for limiting the opportunities for possession of firearms by certain classes of persons, such as felons. In light of this broad policy determination, it would be unrealistic to assume that Congress did not intend to cover the pawn situation, which can be a significant source of firearm traffic. The major concern of Congress was to keep guns out of the hands of dangerous persons, not whether the gun was being acquired by sale or redemption.

C. 18 U.S.C. 922(a)(6), interpreted to include a pawn redemption as an acquisition, is constitutional. It does not constitute a taking of property, because petitioner's own actions placed him within the statutory scheme. The statute does not unconstitutionally compel testimony. Nor does the general reach of congressional power fall short of this intrastate transaction. It is well established that a reasonable regulatory scheme directed to the vindication of interstate commerce may reach individual related transactions, even though they are wholly intrastate.

ARGUMENT

CONGRESS INTENDED IN 18 U.S.C. 922(a)(6) TO PROHIBIT THE MAKING OF A FALSE STATEMENT IN CONNECTION WITH THE REDEMPTION OF A FIREARM FROM A PAWNSHOP

The question in this case is whether the explicit congressional prohibition against making false statements in connection with the acquisition of a firearm under 18 U.S.C. 922(a)(6) may properly be read to include within that prohibition the redemption of a firearm from a pawnshop. In our view, both the statutory framework and the legislative history support the conclusion that Section 922(a)(6) (Title IV of the Omnibus Crime Control and Safe Streets Act of 1968) was intended to apply to redemptions of firearms as well as sales of second-hand weapons by pawnbrokers. The court below agreed with our

reading of the statute; so has the Court of Appeals for the Tenth Circuit, with the comment that "the statute contemplates any transfer of property." *United States* v. *Beebe*, 467 F. 2d 222, 224, petition for certiorari pending, No. 72-5866. A conflict, however, has been created by the Fifth Circuit's holding to the contrary in *United States* v. *Laizure*, 460 F. 2d 709. In *Laizure*, the court perceived an ambiguity in the language of Section 922(a)(6) and, relying upon *United States* v. *Bass*, 404 U.S. 336, invoked a rule of lenity in favor of the construction advocated here by petitioner.

We stress at the outset that the rationale of *Laizure*, and its reliance on *Bass*, which is also relied upon by petitioner (Pet. Br. 16-20), is erroneous in the present context. In *Bass* the issue was whether 18 U.S.C. App. 1202(a) (Title VII of the Omnibus Crime Control and Safe Streets Act of 1968) prohibited all possession of a firearm by a felon or only applied to possession connected with interstate commerce. This Court rested its invocation of the rule of lenity primarily on the fact that Section 1202(a) did not give "a fair warning * * * in language that the common world will understand, of what the law intends to do if a certain line is passed." 404 U.S. at 348. Here, as we shall demonstrate, a reading of Section 922(a)(6) and companion provisions, as well as the relevant legislative history, leaves no uncertainty as to the meaning of the statute.

Further, there can be no doubt that "the common world" would understand that one should not lie on

official forms, and that the proscribed conduct was clearly spelled out on the forms. There was no need to guess as to what conduct would be a violation of the law.

A. The Statutory Language and Pertinent Legislative History Demonstrate that Redemption of a Pawn Was Intended to Be Covered by the Statute.

1. Section 922(a)(6) prohibits false statements made "in connection with the acquisition or attempted acquisition of any firearm [likely to deceive] with respect to any fact material to the lawfulness of the sale or other disposition of such firearm" under the provisions of the act (emphasis added). The language on its face covers all transfer of firearms to all recipients. "Acquisition" and "sale or other disposition" are correlatives in this sentence so that if the pawnbroker "disposes", the pawnor "acquires." See Funk and Wagnall's *Standard Handbook of Synonyms, Antonyms, and Prepositions*, 345-346 (1947).

Our reading of Section 922(a)(6) is confirmed when we place it in context. Other related sections of Title IV similarly speak in terms broadly encompassing any disposition of firearms, rather than merely formal sales. Section 922(a)(1) prohibits all but licensed persons from "dealing in firearms or ammunition." Section 922(b)(1) forbids such licensed individuals "to sell or deliver" firearms to juveniles. Section 922(b)(2) makes it a crime for dealers "to sell or deliver" weapons to persons in any state where "at the place of sale, delivery or other

disposition" such transfer would violate local law. Section 922(d) provides that arms dealers may not "sell or otherwise dispose" of any firearm to convicted criminals or narcotic addicts. Section 923(g) requires all weapons dealers to maintain "records of importation, production, shipment, receipt, sale, or other disposition, of firearms . . ." (emphasis added).[1] And, directly to the point, Section 921(a)(11) includes pawnbrokers among dealers who must be licensed,[1] while Section 921(a)(12) specifically

[1] This intended effect of the broad language of the legislative provisions is underscored by a colloquy between Congressman Donohue and Attorney General Clark, during the House hearings considering Title IV of the Omnibus Crime and Safe Streets Act:

> Mr. Donohue: Do you not think, Mr. Attorney General, to attain the real objective and purpose of this bill, it should not only deal with the sale, but whoever sells or delivers?
>
> Mr. Clark: It covers delivery, too.
>
> Mr. Donohue: Where?
>
> Mr. Clark: Well, generally through the bill when you talk about—well, it would be unlawful for any licensed importer to sell or deliver. And licensed dealer to sell or deliver.
>
> Mr. Donohue: It is not restricted to just sale for consideration?
>
> Mr. Clark: No. The delivery, too.

Hearings before Subcommittee No. 5, House Committee on the Judiciary, on Anti-Crime Program, 90th Cong., 1st Sess., p. 260.

[1] Section 921(a)(11) provides:

> The term 'dealer' means (A) any person engaged in the business of selling firearms or ammunition at wholesale or retail, (B) any person engaged in the business of repairing firearms or of making or fitting special barrels,

indicates that it is the pledge-redemption situation which brings them within the scope of the federal licensing provisions:

> The term 'pawnbroker' means any person whose business or occupation includes the taking or receiving by way of pledge or pawn, of any firearm or ammunition as security for the payment or repayment of money. [Emphasis added.]

Having included pawnbrokers in the statutory scheme because of the pawn transaction, it would be wholly inconsistent to exempt the transaction itself from the reach of the statute.

Indeed, congressional concern over the activities of pawnbrokers regarding firearms is nothing new. It can be traced back to the 1934 congressional hearings considering the administration proposal to regulate the sale and transfer of machine guns and concealable weapons (H. R. 9066). In testimony before the House Ways and Means Committee, then Assistant Attorney General Keenan advanced the position of the Department of Justice that the pawnbrokers' firearms tax be set at a rate higher than other firearms dealers, in an effort to remove the "control of firearms away from pawnbrokers." Hearings before the House Committee on Ways and Means on National Firearms Act, H. R. 9066, 73d Cong., 2d Sess., p. 91. As enacted, the National Firearms Act

---

stocks, or trigger mechanisms to firearms, or (C) any person who is a pawnbroker. The term 'licensed dealer' means any dealer who is licensed under the provisions of this chapter. [Emphasis added.]

of 1934 (48 Stat. 1236) placed a special tax on dealers of firearms at a rate of $200 per year; pawnbrokers were taxed at a rate of $300 per year.

Congressional attention was again directed to the relationship between pawnshops and firearms control during the 1968 hearings before the Senate Subcommittee to Investigate Juvenile Delinquency, then considering federal regulation of the interstate traffic in mail order firearms. Mr. James V. Bennett, Director of the Federal Bureau of Prisons, in his testimony before that subcommittee, recommended that higher licensing fees be charged to pawnbrokers than other firearms dealers. In explaining this difference, Mr. Bennett cited a number of examples of irresponsible dealings by pawnshops with respect to weapons, suggesting that licensing provisions should differentiate between pawnbrokers and the large number of legitimate gun dealers who make a conscientious effort to insure that guns do not get into irresponsible criminal hands. Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, on Juvenile Delinquency, 88th Cong., 1st Sess., pp. 8879-8880. The legislation at issue adopts this suggestion, setting licensing fees for dealers, other than dealers in destructive devices, at $10 per year; the license fee for pawnbrokers is $25 per year (18 U.S.C. 923(a)(3)).

2. In this statutory setting, it is clear that Congress intended the term "acquisition" in Section 922

(a)(6) to cover redemptions.[4] At least two other legislative sources endorse this conclusion. First, we have the express finding of Congress "that only through adequate Federal control over interstate and foreign commerce in these weapons, and over all persons engaging in the businesses of importing, manufacturing, or dealing in them, can this grave problem be properly dealt with * * *." Similarly, the further findings that the "sale or other disposition" by federal licensees to non-residents had "tended to make ineffective the laws, regulations, and ordinances in the several States and local jurisdictions regarding such firearms" reflect an intent to cover any and all transfers of weapons by federally licensed dealers including, we submit, redemptions of pawned weapons. (P.L. 90-351, Section 901(a)(3) and (5), 82 Stat. 225; emphasis added).

Pointing in the same direction is the statement of Mr. David Cohen, President of the Pawnbrokers Association of the City of New York, testifying in opposition to that portion of the proposed legislation relating to pawnbrokers:

> Actually a pawnbroker is not a person engaged in the business of buying and selling at wholesale or retail and therefore is not a dealer. Pawnbrokers simply lend money on the basis of a

[4] While we disagree with petitioner's characterization of the nature of a pawn transaction (Pet. Br. 6-7) (see Uniform Commercial Code, §§ 9-101, *et seq.*), the nature of such transaction is irrelevant in view of the clear congressional intention to reach all transfers of firearms, including pawn transactions.

pledge and our experience in New York is that close to 90 percent of pledges are redeemed.

Hearings before Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, on Federal Firearms Act, 90th Cong., 1st Sess., p. 1062. Thus, although explicitly informed that a large portion of a pawnbroker's transactions in firearms were solely redemptions, Congress nevertheless chose to include all transactions of pawnbrokers within the coverage of the Act rather than merely their sales.

Had Congress been concerned only with pawnbrokers' activities in selling weapons, it would have been unnecessary to refer specifically to them in part (C) of the definition of dealer (see *supra*, pp. 9-10, n.4) as they would have been covered in part (A) as "any person engaged in the business of selling firearms or ammunition at wholesale or retail." See *United States* v. *Rosen*, 352 F. Supp. 727, 729 (D. Idaho); *McLemore* v. *United States Treasury Department*, 317 F. Supp. 1077 (N.D. Fla.). Moreover, as already observed, if petitioner's argument that Congress did not intend to reach pawn redemptions were correct, the specific definition of a pawnbroker's business as "the taking or receiving, by way of pledge or pawn" of a firearm "as security for the payment or repayment of money" would have been without meaning. Finally, it is significant that redemption transactions are not included among those expressly exempted from the provisions of Title IV

(see Sections 922(a)(2)(A) and 925).[4] In light of the focus on pawnbrokers, this cannot be deemed an oversight.

In sum, the express statutory language coupled with the legislative history manifests a clear congressional intent to cover redemption under Section 922(a)(6).[5]

---

[4] Petitioner seeks to analogize the pawnbroker-redemption situation to those specific exemptions from the provisions of the act that relate to customizing and repair of rifles (Pet. Br. 13-14). But it is clear that the pawn transaction is more than a mere "interruption in possession" which might occur during repair or customization. A pawn transaction is a secured transaction, with all the rights and duties accorded such a transaction by law. The pledgee in such a transaction has been considered as having a "lien" on the collateral. See Means v. Bank of Randall, 146 U.S. 620. Upon redemption, the pawnor "acquires" exclusive possession and use of the goods which were used as collateral, as well as release from the debt obligation. If he does not redeem the goods within the prescribed time, he loses the title as well as possession.

[5] Should petitioner's construction of Section 922(a)(6) prevail, a person in his place presumably could also not be prosecuted for the same acts pursuant to Section 924(a), which provides:

> Whoever violates any provision of this chapter or knowingly makes any false statement or representation with respect to the information required by the provisions of this chapter to be kept in the records of a person licensed under this chapter * * * [shall be guilty of a crime].

Although Section 923(g) requires all firearms dealers, including pawnbrokers, to keep records, including Form 4473, of all weapons "dispositions" made by them, a pawn redemption would then not be a "disposition," and no records could be required to be kept. Such a gap would seriously impair the statutory purpose of control of firearm traffic.

B. The Congressional Policy Underlying the Statutory Scheme Underscores the Validity of Treating a Pawn Redemption as an "Acquisition" and "Disposition" Under Section 922(a)(6)

18 U.S.C. 921-928, enacted as Title IV of the Omnibus Crime Control and Safe Streets Act of 1968 (Public Law 90-351),[1] created a comprehensive system of regulation applicable to federally licensed dealers in firearms. The underlying objectives of the statutory provisions were to utilize federal action to "stem the virtually uncontrolled flow of firearms"; to assist in making local enforcement more effective; and to impose "stringent prohibitions * * * to keep dangerous devices out of the hands of dangerous people." (Senator Tydings, 114 Cong. Rec. 18219-18220). The most effective way to achieve these aims was deemed to be channeling the disposition of firearms through federally licensed dealers whose activities would be strictly controlled (114 Cong. Rec. 12808, 18220, 18230-18231).[2]

[1] Shortly before the effective date of Title IV, it was superseded by the Gun Control Act of 1968 (Public Law 90-618), which was almost identical, except for extending coverage to certain transactions involving long guns as well as handguns. All statutory language relevant to the question of interpretation here is identical in both acts.

[2] Senator Tydings expressed the purpose of these controls as follows (114 Cong. Rec. 18220):

> * * * the appropriate place to put primary responsibility for enforcement is not with State and local officials, but rather with Federal licensees who are best situated to enforce the control. For this reason, title IV greatly tightens up the qualifications of a Federal licensee over existing law and over what is contained in amendment

This rigid control over licensees and their activities is all-embracing. Only licensed manufacturers, dealers, and importers are allowed to "engage in the business" of importing, manufacturing or dealing in firearms or ammunition. 18 U.S.C. 922(a)(1). Section 923 tightened the standards for obtaining firearms licenses and substantially increased the fees for licensees. It was a key aim of these controls to keep firearms out of the possession of convicted felons or others deemed dangerous to the community. This is reflected in various statutory provisions of Title IV. For example, Section 922(d) provides that licensees may not "sell or otherwise dispose of" firearms or ammunition to anyone they know or have reason to believe is a fugitive from justice, a convicted felon or under indictment for a felony, an unlawful drug user or addict, or an adjudicated mental defective or one who has been committed to any mental institution. Further provisions forbid disposition of firearms to anyone who is prohibited from possessing or purchasing a weapon by state or local law at the place of sale or delivery. 18 U.S.C. 922(b)(2). The statute also requires that a licensee note the names, ages and places of residence of all persons to whom firearms are sold or otherwise disposed. 18 U.S.C. 922(b)(5). Additionally, the licensee is required to maintain such records in the form required by the Secretary of the Treasury, filing such reports as the regulations pre-

---

No. 768 [Brooks Amendment]. And the most important responsibilities of those licensees must be undertaken with the sanction not only of a loss of license, but also criminal penalties for willful violation.

scribe (see 26 C.F.R. 178.124). Finally, the licensee's place of business is subject to inspection for the purpose of inspecting records and firearms sold on the premises. Cf. United States v. Biswell, 406 U.S. 311, 315-316. It is clear, therefore, that Congress meant to prevent those convicted of serious crimes from possessing firearms that might subsequently be utilized in further criminal enterprises. See S. Rep. No. 1097, 90th Cong., 2d Sess., p. 30; Hearings before the Senate Judiciary Subcommittee to Investigate Juvenile Delinquency, on Federal Fire Arms Act, supra."

This aim is significantly advanced by requiring that a form be completed by all persons who acquire firearms from dealers. That requirement serves the basic statutory purpose of assuring that weapons are dispensed in a regulated and orderly manner, so as to prevent their undetectable possession by criminals or others whose possession may be against public policy. This assurance of full and accurate compliance is crucial to the congressionally intended use of the regulatory scheme as an aid to law enforcement officials. See S. Rep. No. 1097, supra, at 203. The regulatory system, for example, often makes it possible to trace a firearm involved in a particular crime. Again, in riot situations, it can be useful for

---

"Congress was well aware of the danger to interstate commerce in the misuse of firearms. They knew of the President's Commission on Law Enforcement and Administration of Justice Report, The Challenge of Crime in a Free Society (1967), and its compilation of statistics showing the enormous use of firearms in crimes of violence. See, e.g., S. Rep. No. 1097, 90th Cong., 2d Sess., p. 21.

law enforcement authorities to know the source of guns for the particular area and the customers of firearms dealers. Recordation fulfills this purpose. Obviously, the objective is better served if redemption transactions are included. Indeed, while the business of pawnbrokers is lawful, that business often deals with those persons to which federal gun control legislation was plainly directed. See United States v. Rosen, supra, 362 F. Supp. at 730; 114 Cong. Rec. 13225 (Senator Dodd); Hearings before the Subcommittee to Investigate Juvenile Delinquency of the Senate Committee on the Judiciary, on Juvenile Delinquency, supra, pp. 3379-3380.[*]

It is no answer that petitioner's original possession was lawful under this statute (but see infra, p. 19). Petitioner chose to place the firearm in the stream of commerce by transferring it to a registered firearm dealer. He thus placed himself within the statutory scheme by his own action. In these circumstances, he should not be heard to claim that he gained an immunity from the reach of the statute because of the nature of the transaction originally entered into with the pawnbroker.

---

[*] The fact that pawnbrokers have a substantial effect on the traffic of firearms is well documented. We are informed by the Alcohol, Tobacco and Firearms Division of the Internal Revenue Service that there are 1900 pawnbrokers who are federally licensed firearms dealers. A recent sampling of three licensed pawnbrokers in Los Angeles, California, revealed that during a one year period from July 1, 1972 to June 30, 1973, they collectively carried out a total of 2958 transactions involving firearms, of which 1057 were sales and 1791 were redemptions from pawn.

C. Congress Has the Constitutional Power to Reach the Conduct Here in Question.

The foregoing discussion has dealt with the reach of the statutory language and its legislative history, to show that Huddleston's conduct was proscribed by the statute. We now turn to petitioner's contentions that—whatever its intent—Congress could not constitutionally regulate an interstate pawn transaction in this manner.

1. *Just Compensation*

Contrary to petitioner's claim (Pet. Br. 20-22), the application of Section 922 here does not constitute a taking of property "without just compensation or a noticed, legal procedure for determination of whether that possession is illegal * * *" (Pet. Br. 21). No such proceeding is necessary here. By expressly forbidding the pawnbroker to "otherwise dispose of" weapons to petitioner and other convicted felons (18 U.S.C. 922(d)), Congress has determined that such persons may not lawfully obtain them, even though the actual receipt of the weapons would not under all circumstances be a crime. (See *United States* v. *Bass*, *supra*, 404 U.S. at 350.) In any event, Section 922(a) does not effect a "taking" of property in the circumstances of this case. Petitioner's testimony indicates that the three weapons were the property of his wife. She could have properly redeemed the guns, presuming she was not barred from lawfully acquiring a firearm.

3. Duress

Petitioner's contention (Pet. Br. 22-24) that the statute as applied constitutes a denial of due process, as his answers were obtained under duress, is insubstantial. Petitioner argues that his false answers on each of the Form 4473's were coerced by "the fear of either losing a valuable piece of property or incriminating [himself] * * *" (Pet. Br. 22).

We submit that this case is governed by the well established principle that "one who furnishes false information to the Government in feigned compliance with a statutory requirement cannot defend against prosecution for his fraud by challenging the validity of the requirement itself." *United States* v. *Knox*, 396 U.S. 77, 79 [citing *Bryson* v. *United States*, 396 U.S. 64, and *Dennis* v. *United States*, 384 U.S. 855].

Knox dealt with a contention essentially similar to petitioner's. There the defendant was charged with having wilfully made a false statement on a form required by the Internal Revenue Service, in violation of 18 U.S.C. 1001. Knox claimed that the Fifth Amendment privilege against self-incrimination precluded punishing him for the filings, because they were not voluntary, but compelled by provisions of the Internal Revenue Code. He argued that if he had truthfully completed the forms, he would have incriminated himself under state law, while if he had filed no forms at all, he would have been subject

to a federal criminal prosecution. In rejecting this claim, this Court held:

> This is not to deny that the presence of §§ 4412 and 7208 injected an element of pressure into Knox's predicament at the time he filed the forms. At that time, this Court's decisions in *United States* v. *Kahriger*, 345 U.S. 22 (1953), and *Lewis* v. *United States*, 348 U.S. 419 (1955), established that the Fifth Amendment did not bar prosecution for failure to file a form such as 11-C. But when Knox responded to the pressure under which he found himself by communicating false information, this was simply not testimonial compulsion [396 U.S. at 82]."

Here, just as in *Bryson* and *Knox*, petitioner also had avenues open to him to redeem the weapons lawfully. The weapons were the property of his wife, and she would have been able to redeem the guns without the "grave dangers of self-incrimination" that allegedly "coerced [petitioner] into giving incorrect statements on Form 4473" (Pet. Br. 24). As this Court said in *Bryson*, *supra*, "[o]ur legal system provides methods for challenging the Government's right to ask questions—lying is not one of them." 396 U.S. at 72.

---

[11] As petitioner notes, this Court in *Knox* pointed out that a defendant may have available the defense that a person is not criminally responsible for an act committed under duress. 396 U.S. at 83. However, the Court went on to note that the duress defense is "one that must be determined initially at * * * trial" (*ibid.*). The record fails to indicate that petitioner sought to establish the necessary factual basis for such a defense. Indeed, at trial, petitioner stated that he had not even read the forms prior to signing them.

A. Interstate Commerce Nexus

Petitioner's claim (Pet. Br. 27-30), premised on the language of 18 U.S.C. 922(h),[11] that the prosecution was required to charge and prove an interstate commerce nexus with regard to a violation of 922(a)(6) is without merit. The legislative history of Title IV makes it clear that Section 922 was meant to apply to intrastate as well as interstate business. See, S. Rep. No. 1097, *supra*, at 118; H. Rep. No. 1577, 90th Cong., 2d Sess., p. 12. Senator Tydings, in comparing the scope of the alternative legislation offered by Senator Hruska (Amendment No. 708) and the reach of Title IV, stated that under the provisions of the Hruska Amendment (114 Cong. Rec. 18222):

> * * * [I]f a pawnbroker only receives second-hand weapons as security for the repayment of a loan and does not deal in new firearms, he is not transporting, shipping, or receiving a firearm in interstate or foreign commerce. Used weapons presumably will have come to rest in the hands of the borrower, and the transaction will be wholly intrastate. Such a pawnbroker [under Amendment No. 708] would not need a Federal firearms license to conduct over-the-counter transactions in firearms.

---

[11] 18 U.S.C. 922(h) provides:

> It shall be unlawful for any person—
>
> (1) who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;
>
> * * * *
>
> to receive any firearm or ammunition which has been

In concluding his remarks on this aspect of the Hruska Amendment, which was not adopted, Senator Tydings noted (114 Cong. Rec. 13222):

> To say that we have effectively regulated traffic in firearms when we will not have touched the great bulk of these pawnbroker operations [interstate sales] is a complete and utter hypocrisy.

As noted by the Ninth Circuit in *United States v. Menna*, 451 F. 2d 352, 354, certiorari denied, 405 U.S. 963, in rejecting a similar claim:

> The government did not prove that the firearm in question was shipped or transported in interstate commerce. But this was not required. Section 922(h) is not involved in this prosecution. Under 18 U.S.C. § 922(d)(1), it is unlawful for a licensed dealer to sell or otherwise dispose of any firearm to any person knowing or having reasonable cause to believe that such person has been convicted of a crime punishable by imprisonment for a term exceeding one year. There is no requirement that such firearm be one which has moved in interstate commerce. The fact of Menna's prior conviction was material in view of section 922(d)(1). Congress intended to reach wholly intrastate transactions under the Firearms Act on the theory that such transactions affect interstate commerce.

Petitioner further argues in this regard that if this Court finds that the prosecution need not establish a connection with interstate commerce, then "there is a substantial question as to whether Congress has power under the Commerce Clause to regulate the

---

shipped or transported in interstate or foreign commerce. [Emphasis added.]

pawn transactions" (Pet. Br. 29)." In *Perez* v. *United States*, 402 U.S. 146, this Court sustained an act punishing extortionate credit transactions whether or not a particular action directly affected interstate commerce. The power of Congress to legislate with respect to activities affecting interstate commerce—in both regulatory and criminal statutes—encompasses the power to reach wholly intrastate activities." As the Court in *Perez* stated (402 U.S. at 154):

" Petitioner's sole reliance for this proposition is on the Second Circuit's decision in *United States* v. *Bass*, 434 F. 2d 1295, affirmed on other grounds, 404 U.S. 336. But that case dealt only with 18 U.S.C. App. 1202(a)(1), not the statutory provision involved here. The Second Circuit, in *United States* v. *O'Neill*, 467 F. 2d 1972, has recently distinguished prosecutions brought under Section 922(a)(6) from those pursuant to Section 1202(a)(1). The court noted (467 F. 2d at 1973-1974):

> " " " the statute under consideration in *Bass*, 18 U.S.C. App. 1202(a) (1970), contained the phrase "in commerce or affecting commerce" and the issue before the Court was whether those words modified other conduct described in that statute. In the absence of any significant legislative history the court resolved the ambiguity in favor of the defendant. The statute in the present case, however, differs significantly from that before the Court in *Bass*. Section 922(a)(6) contains no reference to commerce. Furthermore, its legislative history reveals that Congress intended to regulate certain aspects of intrastate dealings in firearms because of their effect on interstate commerce. " " "

" See, e.g., *United States* v. *Wrightwood Dairy Co.*, 315 U.S. 110, 118; *Wickard* v. *Filburn*, 317 U.S. 111, 125; *Katzenbach* v. *McClung*, 379 U.S. 294; *Maryland* v. *Wirtz*, 392 U.S. 183. Pursuant to this power, Congress may regulate an entire

> Where the class *of activities* is regulated and that class is within the reach of federal power, the courts have no power "to excise, as trivial, individual instances" of the class. *Maryland* v. *Wirtz*, 392 U.S. 183, 193.

Petitioner does not dispute that the "class of activities" here at issue—the acquisition of firearms by convicted felons from commercial establishments—"is within the reach of federal power." Congress has expressly found (18 U.S.C. App. 1201) that "the receipt, possession, or transportation of a firearm by felons" and other specified persons constitutes:

> (1) a burden on commerce or threat affecting the free flow of commerce,
>
> (2) a threat to the safety of the President of the United States and Vice President of the United States,
>
> (3) an impediment or a threat to the exercise of free speech and the free exercise of a religion guaranteed by the first amendment to the Constitution of the United States, and
>
> (4) a threat to the continued and effective operation of the Government of the United States and of the government of each State guaranteed by article IV of the Constitution.

---

class of intrastate activities if it determines that the class as a whole affects interstate commerce. See, *United States* v. *Darby*, 312 U.S. 100, 120-121; *Heart of Atlanta Motel, Inc.* v. *United States*, 379 U.S. 241; *Maryland* v. *Wirtz*, *supra*, 392 U.S. at 192-193; *Perez* v. *United States*, *supra*, 402 U.S. at 151-154.

In light of these findings, the fact that in a given case a person may be punished for swearing falsely with regard to a weapon which may not have been in commerce in the recent past does not affect the validity of the reasonable regulatory scheme here involved."

CONCLUSION

It is therefore respectfully submitted that the judgment of the court of appeals should be affirmed.

ROBERT H. BORK,
Solicitor General.

HENRY E. PETERSEN,
Assistant Attorney General.

DANNY J. BOGGS,
Assistant to the Solicitor General.

JEROME M. FEIT,
GEORGE S. KOPP,
Attorneys.

SEPTEMBER 1978.

"The validity of the congressional power exercised under Section 922(a)(6) has been upheld by every court of appeals which has had occasion to confront the issue. *United States* v. *Crandall*, 453 F. 2d 1216, 1217 (C.A. 1); *United States* v. *O'Neill*, 467 F. 2d 1372, 1373-1374 (C.A. 2); *United States* v. *Hudson*, 460 F. 2d 1262, 1263 (C.A. 4), certiorari denied, 409 U.S. 872; *United States* v. *Nelson*, 458 F. 2d 556, 559 (C.A. 5); *United States* v. *Cassity*, 471 F. 2d 317 (C.A. 6); *United States* v. *Garner*, 465 F. 2d 265, 267 (C.A. 7); *Cody* v. *United States*, 460 F. 2d 34 (C.A. 8); *United States* v. *Menna*, 451 F. 2d 982 (C.A. 9), certiorari denied, 405 U.S. 968.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1978 [illegible] 79

REPLY BRIEF OF PETITIONER

LIBRARY
SUPREME COURT, U. S.

FILED
OCT 31 1973
MICHAEL RODAK, JR., CLERK

In the Supreme Court
of the
United States

October Term, 1973

No. 73-1076

William C. Nobleston, *Petitioner*
v.
United States of America, *Respondent*

On Writ of Certiorari to the United States
Court of Appeals for the Ninth Circuit

REPLY BRIEF FOR PETITIONER

Hoover I. Sauthoff
Mowen, Tolles, Hills &
Rothenberger
606 South Hill Street
Los Angeles, California 90014
Tel: (213) 626-1401

Attorneys for Petitioner

INDEX

	Page
ARGUMENT	1
A. THE RULE REQUIRING NARROW CONSTRUCTION OF CRIMINAL STATUTES IS A FUNDAMENTAL AND BROADLY BASED RULE	3
B. THE TERMINOLOGY OF §922(a)(6) IS AT LEAST SUFFICIENTLY AMBIGUOUS TO REQUIRE INVOCATION OF THE RULE REQUIRING NARROW CONSTRUCTION OF CRIMINAL STATUTES	6
C. THE FACT THAT PAWNBROKERS ARE INCLUDED AS LICENSED FIREARMS DEALERS DOES NOT INDICATE THAT THE TERM ACQUISITION IN §922(a)(6) WAS MEANT TO INCLUDE REDEMPTIONS FROM PAWN BY THE PAWNOR	9
D. INCLUDING PAWN REDEMPTIONS WOULD NOT PROMOTE THE PURPOSES OF THE LAW	13
E. THE BASIC FALLACY OF THE GOVERNMENT'S POSITION	15
CONCLUSION	16

CITATIONS

Page

Cases:

[illegible]

Statutes:

[illegible]

Miscellaneous:

[illegible]

In the Supreme Court
of the
United States
October Term, 1978

No. 78-1076

[redacted]

[redacted]

REPLY BRIEF FOR PETITIONER

ARGUMENT

[redacted]

(1) The rule favoring lenity in construing ambiguous criminal statutes is a very limited rule.

(2) The rule regarding narrow construction of criminal statutes is not applicable here because of the alleged clarity of congressional intent behind the term "acquisition" in §922(a)(6).

(3) The legislative history indicates that "acquisition" includes pawn redemptions by the pawnor, because Congress included pawnbrokers as licensed firearm dealers.

First, the Government seeks to avoid confronting both the just construction and the [illegible] that would arise from the Government's construction of [illegible](a)(6) by advancing the unsubstantiated assertion that the firearms in this case could have been retrieved by petitioner's wife. Apart from the fact that this [illegible] the general issue for all pawnshop [illegible] by the Government's interpretation of [illegible](a)(6), the record contains no evidence that petitioner's wife could have redeemed the rifles. While there are no [illegible] statutes regarding the rights of persons other than the borrower, the California statute explicitly [illegible] pawnbrokers believe that the Government's [illegible] regarding the rights of [illegible] is unsound. The relevant statute, California Financial Code §21201, provides that:

"During such [redemption] periods the borrower may redeem the property upon payment of the loan and interest charges." (Emphasis added.)

This [illegible] expressly restricts redemptions to the pawnor only.

[illegible] contrary to the suggestions of the Government, petitioner [illegible] that the statute is unconstitutional [illegible] that the construction urged by the Government [illegible] Court held if the statute [illegible] [illegible] will be raised by the [illegible] resolved by the Government [illegible] [illegible] [illegible]

(4) The purpose of the Omnibus Crime Control and Safe Streets Act of 1968 would be furthered if space reimpositions were included within "acquisitions" in §924(a)(2)(B).

Petitioner believes that each of these arguments is unsound, and petitioner will discuss the facts in each separately. Petitioner will then discuss the basic flaw in the Government's overall position.

A. THE RULE REQUIRING NARROW CONSTRUCTION OF CRIMINAL STATUTES IS A FUNDAMENTAL AND MORALLY BASED RULE

The Government's brief argues that the rule requiring lenity in the construction of ambiguous criminal statutes is a limited rule applicable only when the law does not give a fair warning. It proposes that the common words will understand of what the law intends to do if a conflict line is passed. (United States v. Bass, 404 U.S. 336 (1971)). Such a narrow reading of the principle would be at odds with numerous other decisions, [illegible] such as Bass v. United States, 404 U.S. 336 (1971), [illegible] Bass makes it clear that the rule is based upon much deeper and broader principles, and has far greater applicability than the Government would have it. It is [illegible] Bass [illegible]

"Given this ambiguity, we adopt the narrower reading: the phrase 'in commerce or affecting commerce' is part of all three offenses, and the present conviction must be set aside because the Government has failed to show the requisite nexus with interstate commerce. This result is dictated by two wise principles this Court has long followed.

"First, as we have recently reaffirmed, 'ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity.' Rewis v. United States, 401 U.S. 808, 812 (1971). See also Ladner v. United States, 358 U.S. 169, 177 (1958); Bell v. United States, 349 U.S. 81 (1955); United States v. Five Gambling Devices, 346 U.S. 441 (1953) (plurality opinion for affirmance). In various ways over the years, we have stated that 'when choice has to be made between two readings of what conduct Congress has made a crime, it is appropriate, before we choose the harsher alternative, to require that Congress should have spoken in language that is clear and definite.' United States v. Universal C.I.T. Credit Corp., 344 U.S. 218, 221-222 (1952). This principle is founded on two policies that have long been part of our tradition. First, 'a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.' McBoyle v. United States, 283 U.S. 25, 27 (1931) (Holmes, J.). See also United States v. Harriss, 347 U.S. 174 (1952). Second, because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal

"activity. This policy embodies 'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.' H. Friendly, Mr. Justice Frankfurter and the Reading of Statutes, in Benchmarks 196, 209 (1967). Thus, where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant. Here, we conclude that Congress has not 'plainly and unmistakably,' *United States v. Gradwell*, 243 U.S. 476, 485 (1917), made it a federal crime for a convicted felon simply to possess a gun absent some demonstrated nexus with interstate commerce."

The rule enunciated in *Bass* is a fundamental rule embodying important considerations of the separation of powers, as well as considerations of fairness. The policy underlying the rule forces Congress, when it is proscribing criminal activity, to be precise. The Judiciary is therefore not required to make impossible, time-consuming and post hoc determinations of what Congress might have meant when it enacted a particular statute. As stated by Mr. Justice Frankfurter in *Bell v. United States*, 349 U.S. 81, 83 (1955):

"When Congress has the will, it has no difficulty in expressing it—when it has the will, that is, of defining what it desires to make the unit of prosecution and, more particularly, to make each stick in a faggot a single criminal unit. When Congress leaves to the Judiciary the task of imputing to Congress an undeclared will, the ambiguity should be resolved in favor of lenity. And this is not out of any sentimental consideration, or for want of sympathy with the purpose of Congress in proscribing evil or anti-social conduct."